

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

TIMOTHY DYKENS,
Petitioner,

V.

PETER ALLEN,
Respondent,

Civil Action

NO. 04-10544-NMG

**PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

Now comes the petitioner in the above titled Civil Action, and moves this Honorable Court to decide against the respondents Motion for Dismissal. On the grounds that the issue of a closed courtroom during jury selection was not raised on direct appeal to the S.J.C. I disagree, on page 43 in the Brief For The Appellant it is footnoted as saying, "Although not clear from the record, the courtroom was also closed during jury impanelment," and was cited at the top of same page by stating, " This Court must create a bright line rule of automatic reversal for a sua ponte blanket courtroom closure to prevent the trial court doors in this Commonwealth from being closed at any critical stage of trial, whether that stage involves impanelment, presentation of evidence, argument, or jury instructions.

Wherefore, the petitioner prays that this Honorable Court deny the respondent's motion for dismissal. In the alternative, if this court finds against the petitioner that S.J.C. brief page 43 was not sufficient, the petitioner would delete those sentences, but keep the remainder of the ground on closure of courtroom during jury instructions that are exhausted in the S.J.C. brief pages 37 through 44.

Respectfully

Respectfully Submitted

Timothy G Dykens 7-0-05

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